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Employment Standards Workshop

WAGES AT WORK



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Employment Standards Workshop

WAGES AT WORK

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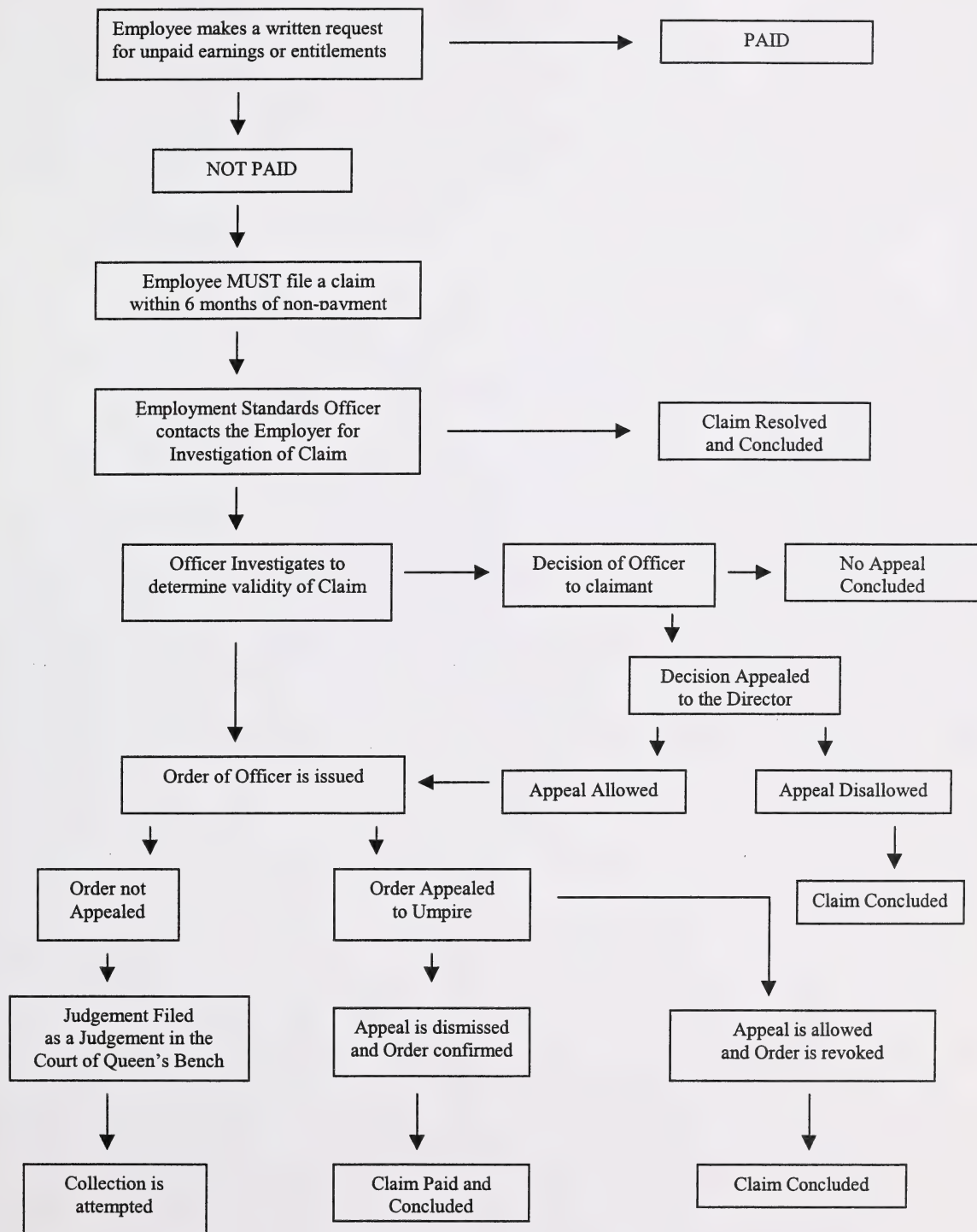
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MODULE I - OVERVIEW - DEPARTMENT OF HUMAN RESOURCES AND EMPLOYMENT

Human Resources and Employment contributes to the Alberta Advantage by working with partners to:

Assist Albertans reach their full potential in society and the economy

Youth Connections helps young people develop skills and find opportunities to make a successful transition from school to further training or work.

Skills Development Program provides access to apprenticeship programs and financial aid for academic upgrading or skills training.

Career development information for Albertans in any stage of their careers can be obtained through our program offices, Career Information Hotline or Learning Information Website.

Job Placement Services are designed to match unemployed, job ready Albertans with employers needing to fill jobs.

Temporary Employment Programs provide people with the opportunity to gain work experience and training with non-profit organizations, municipal and provincial governments, local communities and businesses.

Foster safe, fair, productive, innovative workplace

Employment Standards provides information and education to employers and employees on required standards of employment and receives and investigates complaints. For questions on your rights and responsibilities as an employee or employer, contact our Information Line.

Issues Management provides facilitation and relationship building services to employers, employees, unions and others to enhance collaboration, innovation and effective problem solving in the workplace. It also monitors workplace and labour relations trends.

Mediation Services provides impartial third-party mediation to help resolve labour disputes and appoints arbitrators when the parties have been unable to resolve issues.

Workplace Health and Safety investigates fatalities, serious incidents and complaints; provides compliance programs; administers the regulatory framework; provides public information regarding workplace hazards and promotes effective workplace health and safety through Partnership.

Support and assist those in need

Assured Income for the Severely Handicapped provides a basic level of income support to persons with severe and permanent disabilities.

Alberta Child Health Benefit offers children in low-income families basic medical services such as dental, prescription drugs, optical and ambulance services and essential diabetic supplies.

Supports for Independence provides a basic level of welfare to those people unable to provide for their own basic needs.

Office of the Public Guardian ensures that appropriate support is available to assist adult Albertans who are unable to make their own life decisions. It also helps Albertans complete personal directives to decide what type of care they will receive should they become incapacitated.

Alberta Widows' Pension provides a basic level of income to widows and widowers between the ages of 55 and 64 with limited financial resources.

Information Lines and services

Career Information Hotline

Phone: (Edmonton) 780 422-4266
(Alberta) 1-800-661-3753

Alberta Learning Information Service

www.alis.gov.ab.ca

Office of the Public Guardian

Phone: (Edmonton) 780 422-1868

Personal Directive Inquiry

Phone: (Edmonton) 780 427-7947

Employment Standards Information Line

Phone: (Edmonton) 780 427-3731

Website www.gov.ab.ca/hre/employmentstandards

Alberta Child Health Benefit

Phone: (Edmonton) 780 427-6848

Workplace Health and Safety

Phone: (Edmonton) 1-866-415-8690

Issues Management

Phone: (Edmonton) 780 422-3041

Mediation Services

Phone: (Edmonton) 780 427-8301

To reach any of the above numbers toll-free in Alberta, first dial 310-0000



MODULE II – OVERVIEW OF THE EMPLOYMENT STANDARDS CODE/REGULATION AND POLICY

The Alberta Employment Standards Code establishes minimum standards of employment for employers and employees in the workplace. These minimum standards include payment of earnings, minimum wage, hours of work, days of rest, overtime pay, vacations and general holiday pay, maternity and adoption leave, notice or pay due upon termination of employment and restrictions on the employment of employees under 18 years of age.

The Employment Standards Regulation exempts selected group of employees from the Code's basic provisions and modifies the rules relating to hours of work and overtime for other workers. The Regulation also contains provisions for the employment of Adolescents and Young Persons and the Minimum Wage.

General rules which apply to the Code

There are some general rules and procedures that apply throughout the Employment Standards Code, These include:

The Preamble

The Code contains a general statement of its purpose. These statements are often used to help understand its meaning when its more specific words are unclear.

Civil remedies and greater benefits (Sec. 3, ESC)

In some cases, employers and employees agree to greater benefits, such as additional vacation time and pay, than provided by the Code. These benefits, which are greater than established minimum standards, are enforceable under Employment Standards legislation.

Minimum standards cannot be avoided (Sec. 4, ESC)

The Code has a rule that prevents people from opting out of the core standards, either directly or indirectly.

Employment deemed continuous (Sec. 5, ESC)

Sometimes businesses change ownership, yet the employees continue to work for that same business. The Code deems the employee's employment to be continuous despite such transactions. This ensures entitlements provided by the Code, which have been earned by the employee through long service with the business, are not lost due to the change of the ownership. For example, an employee who had worked for one owner for just over 4 ½ years and continued working for the new owner for an additional 2 years, would have cumulative service of over 6 years.

Several employee benefits depend on employee's length of service, these include:

- General Holiday Pay
- Vacation Pay
- Termination Notice
- Maternity and Adoption Leave

The continuous employment provisions of the Code also apply when a company is placed in receivership. If a receiver retains some or all of the employees, to assist in the maintenance or winding down of the business, the employee's length of service with the employer is carried over. If the company is sold to a new owner by the receiver, the continuous employment provisions also apply.

Who is covered by the Code

Approximately 90 percent of employees employed in Alberta fall under provincial Employment Standards jurisdiction. Most employees have full coverage of earnings under the Code, whether they are considered full-time, part-time, casual, pieceworkers, commissioned, students or salaried.

Who is not covered by the Code

There are several groups of workers who fall outside of the Code's jurisdiction.

Out-of-province, Inter-provincial and International Employees

As a general rule, jurisdiction is based on where the work was performed. If an employee works in another province or country, that province or country's labour laws apply. Even where employees are employed with a company operating in Alberta, but in the performance of their duties are required to travel to other provinces or countries, their employment will be governed by the province or country where the work was performed. The same rule applies in reverse for an employee working in Alberta, whose employer is located outside of this province.

Employees covered by other Acts

Coverage under the Code excludes employers and employees who are covered by other more specific legislation. This exclusion applies to the entire Employment Standards Code except maternity and adoption benefits. Examples include:

- Academic staff employed by institutions are covered by the *Technical Institutes Act*, the *Universities Act* or the *College Act*
- Employees who are members of a municipal police service appointed pursuant to the *Police Act*.

Employees who Fall under Federal Jurisdiction

The following industries fall under Federal jurisdiction. Employees working in these types of businesses are covered by the Canada Labour Code:

- Airports and air transportation
- Inter-provincial transportation
- Chartered Banks
- Broadcasting and telecommunications (radio, television and cable television, telephone companies)

- Railways
- Postal Service
- Grain elevators – (feed mills, flour mills, feed warehouses and seed cleaning mills)
- Federal government employees
- Shipping and Navigation
- Canal, ferries, tunnels and bridges
- Interprovincial and international pipelines
- Businesses dealing with protection of fisheries as a natural resource
- First Nations
- Uranium mining and Atomic energy

Collective Agreements

The Labour Relations Code, administrated by the Labour Relations Board, allows employees, to choose union representation and bargain collectively. When they do so, Unions negotiate collective agreements with employers which govern terms and conditions of employment and provide a process to resolve disputes regarding interpretation and application of the agreement.

If the terms of a collective agreement do not provide for earnings required by the Employment Standards Code, or provide for earnings below the minimums stipulated in the Code, the Employment Standards Code's provisions will apply.

Employee Status

Individuals who are determined to be independent workers (self-employed) are not covered by the Employment Standards Code. The Code applies only to employees and employers, as defined in the Code. In most work situations it is obvious whether a person is an employee. However, in some cases a person doing work is self-employed and therefore not an employee.

The Code defines employee as “an individual employed to work who receives or is entitled to wages, and includes a former employee”. Employer is defined as “a person who employs an employee, and includes a former employee”. These definitions; however, provide only minimal guidance when employee status is in dispute.

Over many years, a number of common law tests have been developed to help distinguish employees from contractors and other workers who are not in an employment relationship. The primary method used to distinguish an employee from a contractor is often referred to as, the “four-fold test”. It looks at: direction and control; ownership of tools and equipment; chance of profit; and risk of loss.

Direction and Control

Employers usually have control over the activities of an employee during their working hours. For example, directing when the employees starts work, finishes work, what they do on the job, and so on. Self-employed workers are usually not controlled; to the extent that their contract allows, they are independent, set their own hours of work, and decide how the work will be done.

A employee usually works for only one employer, and is economically dependent on that employer.

Ownership of tools and equipment

Usually a self-employed person uses their own tools and equipment on the job; payment for the job includes the use of their tools. An employee usually uses the tools and equipment of the employer.

Chance of profit, risk of loss

Self-employed people often have invested something in their means of livelihood. If they own their own tools, equipment, or work vehicle, there is a risk of loss if work is not available. A self-employed person will often “bid” on a job. If the agreed-on price is too low, the contractor may take a loss on the job. On the other hand, if someone who is self-employed works hard and business is good, there is a chance they will earn a profit.

Employees have no chance of making a profit and run no risk of incurring loss. An employee paid an hourly rate, salary, commission or other wage rate would not have a chance of “profit” in the usual sense.

The following two tests are also important tools in making a determination about employee status:

Organization or Integration Test

The organization or integration test determines if the work a person performs is integral to, or contributes to, the operation of the business. The more integrated the work is with the employer’s business, the more likely the person is an employee.

Permanency Test

This test looks at the permanency of the relationship. The longer and more continuous the relationship, the greater the chance that it is an employment relationship.

Additional criteria that may be considered when determining employee status include:

Method of Payment

Self-employed individuals are usually paid an agreed-on sum of money for the completion of a certain job. Employees are usually paid for the time they put in, whether by the hour or by the month.

Agreement

Often, there is a contract or agreement, in writing, between a self-employed worker and a contractor that exists for the protection of both parties.

Business license or GST number

An independent businessperson may have a license to do business in a municipality. They are also required to apply for and use a GST number if the business has revenues of \$30,000 a year or more.

Tax returns, federal and W.C.B. remittances

An independent contractor will file a tax return as self-employed, which allows an offset for

expenses incurred in making an income, while an employee has few, if any tax breaks for employment expenses. A self-employed person reports their income based on invoices issued to the company to whom they have provided a service, the employee receives a T-4 slip from the employer. The self-employed person is responsible for their CPP premiums and W.C.B. remittances.



MODULE III - EMPLOYMENT RECORDS AND PAYMENT OF EARNINGS

EMPLOYMENT RECORDS

The Employment Standards Code requires employers to keep accurate and current employment records for each of their employees. Some of this information is to be provided to the employee at the end of each pay period. An employer must, at the request of an employee, provide a detailed statement of how their earnings were calculated, and the method of calculating any bonus or living allowance paid, whether or not it forms part of wages.

Employer Records

The following records must be kept for each employee:

- regular and overtime hours of work;
- wage rate and overtime rate;
- earnings paid showing separately each component of the earnings for each pay period;
- deductions from earnings and the reason for each deduction;
- time off instead of overtime pay provided and taken;
- name, address and date of birth;
- the date that the present period of employment started;
- the date on which a general holiday is taken;
- each annual vacation, showing the date it started and finished and the period of employment in which the annual vacation was earned;
- the wage rate and overtime rate when employment starts, the date of any change to wage rates or overtime rates, and particulars of every change to them;
- copies of documentation relating to maternity and adoption benefits;
- copies of termination notice and of written requests to employees to return to work after temporary lay-off.

Note: Employment records must be kept by an employer for at least 3 years from date each record is made.

Employee Statement of Earnings

The Code requires an employer to provide a written statement of earnings, at the end of each pay period, to each employee, that details the following information, for the pay period specified:

- regular and overtime hours of work;
- wage rate and overtime rate;
- earnings paid, showing separately each component of the earnings for each pay period;
- deductions from earnings and the reason for each deduction;
- time off instead of overtime pay provided and taken;
- the period of employment covered by the statement.

The statement must be in a form the employee can keep for their record. Information recorded on the back of a cheque is not acceptable.

A Sample Statement of Earnings

Name: Jack G. Candle
 Pay Period: Feb 21 - Feb. 25, 2000
 Wage Rate: \$6.00 per hour
 Overtime Rate: \$9.00 per hour

Earnings	Hours	Earnings	
Regular Hours	30	\$180.00	
Overtime	4	0 banked	
Time off in lieu (taken Feb.22)	6	\$36.00	
Vacation pay paid			
General Holiday pay	8	\$48.00	
Total Hours	40		
Total Earnings		\$264.00	\$264.00
Deductions			
Income Tax	\$20.00		
EI	\$5.00		
CPP	\$5.99		
Total Deductions	\$32.99		\$32.99
Net Pay			\$231.01

PAY PERIODS

The Code requires employers to establish pay periods for the calculation of wages and overtime. A pay period can be daily, weekly, bi-weekly, bi-monthly, but, can not be longer than one month.

Monthly pay periods do not have to coincide with a calendar month. For example, a monthly pay period can be from the 10th of one month to the 9th of the next month.

Payday for Employees

Employees must receive payment for wages, overtime pay and general holiday pay earned within 10 consecutive days of the end of the established pay period.

For example, if an employee begins work two days before the end of the month, and the end of the month was the end of the pay period, the employee should be paid wages for those two days of work before the 11th day of the next month.

Payment of Earnings upon Termination

The following rules apply:

- if an employee quits or an employer terminates an employee's employment and no termination notice is required to be given, earnings are to be paid not later than 10 consecutive days after the last day of employment.
- if an employee quits without giving notice required by the Code, the employer must pay the employee's earnings no later than 10 consecutive days after the date on which the notice would have expired, had it been given.
- When an employer gives an employee, or an employee gives an employer, notice of termination of employment in accordance to the Code and the employee works out the notice period, the employer must pay the employee's earnings not later than 3 consecutive days after the last day of employment.
- If an employer terminates an employee's employment by providing termination pay or a combination of termination pay and/or notice, the employer must pay the employee's earnings not later than 3 consecutive days after the last day of employment.
- If an employer terminates an employee without notice for what they believe is "just cause" and the employee disagrees, it is Employment Standard's policy position that the employer must pay all outstanding earnings owed no later than 10 consecutive days after the last day of employment.

Note: While the maximum times by which an employee must be paid in the case of termination of employment are set by the Code, employers are encouraged to pay employees as soon as possible after termination.

WAGES AND EARNINGS

Wages

Under the Employment Standards Code, wages are defined as “salary, pay, money paid for time off instead of overtime pay, commission or remuneration for work, however, calculated”. In other words, whether an employee is paid by monthly salary, by the hour, by commission, by kilometer driven, or by any other way of calculating payment for work done, any such payment is considered “wages”.

The definition of wages is important because the calculation of overtime, vacation pay, general holiday pay and termination pay is based on employee wages. For example, a truck driver would receive vacation pay based on his/her straight-time wages, even though their wage was based each kilometer driven.

Rules for particular benefits follow:

Board and Lodging

If an employer supplies board and/or lodging to an employee, the employer may include the cash value of the board and/or lodging in the employees regular pay. For example if an apartment caretaker is paid a rate of \$400 per month plus a suite valued at \$600 per month, his wages for the month would be \$1000.

Shift differential pay

Shift differential pay is an extra payment made to employees to compensate them for working less desirable hours or shifts, or under dangerous or unpleasant conditions. This extra payment is part of wages, and is to be included in the calculation of overtime pay, vacation pay, general holiday pay and termination pay.

An example of a typical shift-differential payment system follows:

An employee working from 8 a.m. - 4 p.m. is paid \$8 per hour; from 4 p.m. - midnight \$8 per hour *plus 20 cents per hour*, from midnight - 8 a.m. \$8 per hour *plus 40 cents per hour*. The hourly wage rates will be \$8, \$8.20 and \$8.40 respectively.

Not included in Wages

Overtime pay, vacation pay, general holiday pay and termination pay are excluded from the definition of wages. Any agreed-on amount of money paid to an employee on temporary lay-off or on a leave of absence is not wages within the meaning of the Code.

In addition, the following payments would not be considered wages:

Bonuses and Gifts

Payments that are totally at the discretion of the employer that are not clearly related to hours or work, production or efficiency, are classified as gifts and bonuses.

For example, Christmas “bonuses” or shares of annual “profit sharing plan” would not be considered wages.

Allowances and expenses

Expense money, whether granted in one lump sum and labeled as such, or paid out on the basis of submitted proof of payment, is not wages.

Tips and Gratuities

In order to qualify as a tip or gratuity, a sum of money must be paid under several specific conditions:

- the payment is voluntary
- the payment represents a sum over and above that which is due
- the payment is for a service or services; linked to an identifiable activity

Employer Contributions

Contributions made by an employer, on behalf one or more employees, to programs such as private pension plans and medical or dental plans are not part of the employee's wages. Other payments made by employers such as; tuition fees, strike pay or employee assistance and discounts are also not considered to be wages.

Sick time and bereavement leave

In Alberta there is no legislation requiring the payment of either sick time or bereavement leave. These benefits are dependent on company policy and are not enforced under the Code.

Paying Earnings

Earnings means wages, overtime pay, vacation pay, general holiday pay and termination pay.

Earnings must be paid to employees in cash, cheque or money order drawn on a recognized financial institution such as a bank, trust company, or credit union.

An employer may request an employee to provide a bank account for direct deposit of their pay, if the employee refuses to provide a bank account number, the employer may proceed with disciplinary action.

Reduction of Earnings

The Code requires an employer to give each employee notice of reduction of their earnings, before the start of the pay period in which the reduction is to take effect. If an employer does not give the required notice, the employee(s) affected must be paid at the old rate of earnings for the whole pay period during which the reduction would have taken effect.

In the case of reduction in vacation entitlement, whether in time off or in pay, the notification will not affect entitlements earned before or during the pay period in which the reduction occurs.

Deductions from Earnings

The Code limits the deductions employers are allowed to make from an employee's pay. With few exceptions, money earned by an employee must be paid to the employee.

An employer has a legal obligation to make certain deductions; others are optional.

Some statutory deductions which an employer must make, regardless of the wishes of the employee, include:

- Federal and provincial income tax
- Employment Insurance premiums
- Canada Pension Plan contributions
- Alberta Health Care premiums
- Judgment or an Order of the Court

Where any other deduction is contemplated and not covered under a Collective Agreement, the employee's written authorization must be obtained before deductions can be taken. The authorization must be clear and specific as to the amount that is to be deducted.

Deductions not allowed

There are some deductions that are NOT ALLOWED, even with written authorization from the employee.

Faulty Workmanship

An employer cannot transfer the responsibility for the quality of a product to the employee. Once the employer/employee relationship is established, the employer assumes liability for the quality of goods produced. Even with an employee's written authorization an employer may not deduct from earnings any amount for faulty workmanship.

Examples of faulty workmanship:

- accidental damage of goods in a retail outlet
- breakage in a restaurant
- errors in calculation
- “walk-outs” in a bar or lounge
- damage to a company vehicle or equipment due to careless handling, or
- theft of property as a result of inattention by a security guard

Although an employer cannot deduct for faulty workmanship, they are not without remedies. Negligent employees are liable to stricter supervision, dismissal or civil action in the courts.

Cash Shortages or loss of property

In most cases, employers can not recover what they feel is an improper loss by deducting from earnings, they can deal with the matter through disciplinary action, or if they suspect theft they have the option of taking the matter to police or through the civil court system.

The Code does allow deductions for cash shortages or loss of property *only* with authorization and *only* if no other person has had access to the cash or property.

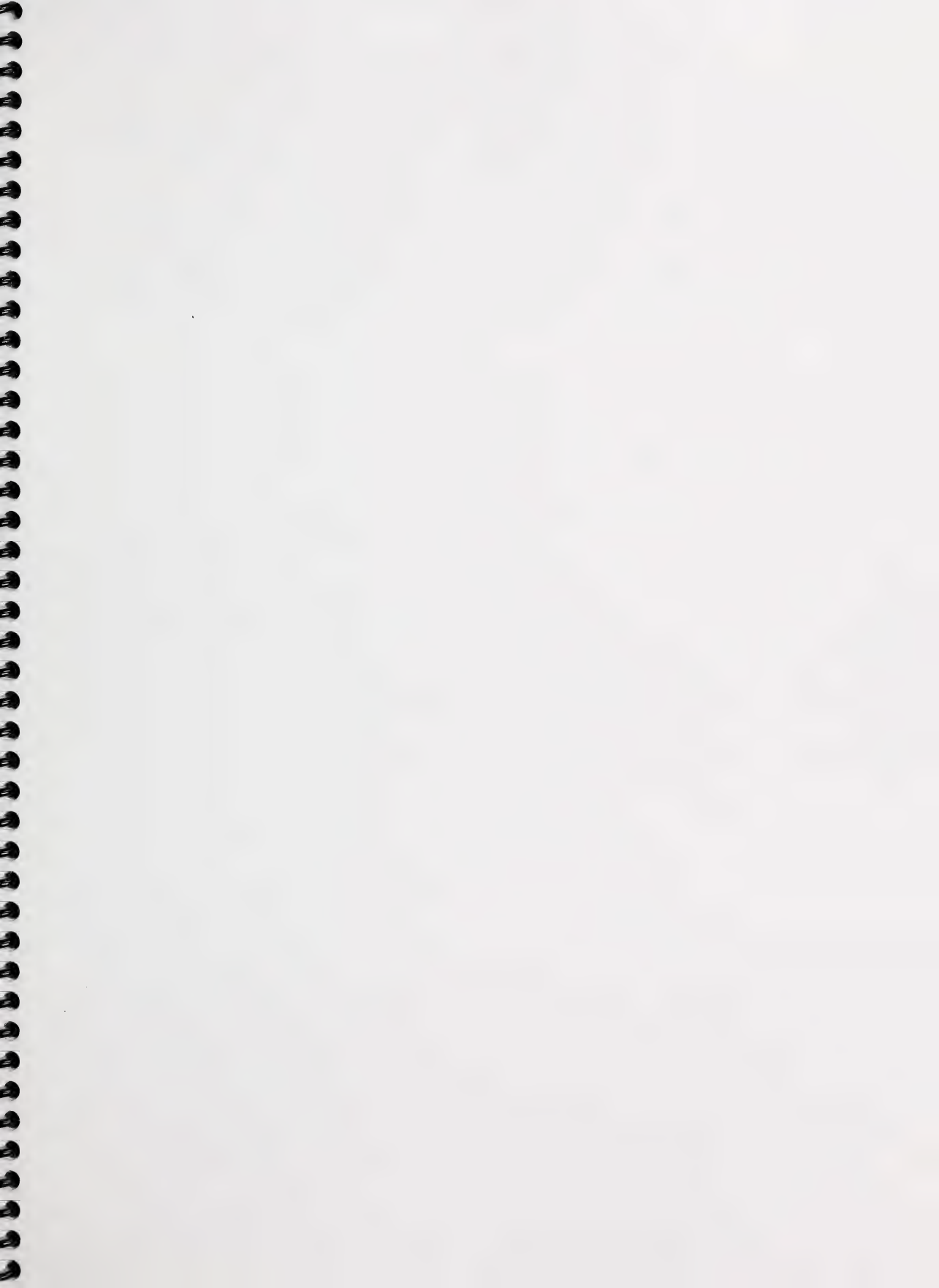
For example, in retail an employee will often be responsible for the cash in a register. They count and sign for the amount of the “float” in the till, account for sales and finalize their accounting of the cash. The employee may be held responsible for shortages if no other person has access to the till and a specific authorization has been signed by the employee. If other individuals have access to the till, the employee cannot be held responsible for any loss.

Deductions made for payroll errors

Where there is an “honest error” in a payroll calculation and an employee is overpaid, the employer is permitted to recover from the employee up to six months’ from the date when overpayment was made. This parallels the ability of an employee to recover wage and overtime under-payments for a similar period. The deduction can be seen as simply a valid adjustment resulting from an honest error and is not considered a deduction.

It is anticipated the recovery of the overpayment will be done in a way that is both consistent for all affected employees and minimizes inconvenience to the employees as much as possible.

An example of a legitimate payroll error would be if a direct deposit for one employee was deposited into another employee’s bank account in error.



Module IV – Minimum Wage and Minimum Work Hours

Minimum Wage

Effective October 1, 1999, Alberta's minimum wage rate was established at \$5.90 per hour.

Effective July 1, 2000 certain salespersons and professionals, as defined in Part 1, Section 2 (2) and Part 2, Section 9 (b) of the Employment Standards Regulation, are entitled to \$236 per week, minimum wage which was established on October 1, 1999. Please see the Appendix to this chapter for list of occupations covered by this portion of the minimum wage provision of the regulation.

Also effective July 1, 2000, those employees employed in domestic work in a private dwelling are entitled to the following:

- where the employee lives or lives primarily in the employer's home, the minimum wage is \$1125 per month;
- if the employee comes into the home to work they are entitled to the minimum wage of \$5.90 per hour for each hour worked.

Minimum Hours of Work

If an employee works for fewer than three consecutive hours, the employer must pay wages for that period that are at least equal to three hours at the minimum wage.

This provision recognizes that an employee usually spends time and money driving or taking public transportation to work, and needs to earn at least the equivalent of three hours at minimum wages to be compensated for this time and expense. If an employee's regular wage is greater than the minimum wage, the employer may pay for less than three hours' work at this higher rate. Therefore, the employee must be paid the greater of:

- their hourly wage times the hours actually worked, or
- three hours at minimum wage

Examples:

- An employee who is paid \$15.00 an hour who is called for a task that only takes a few minutes, must be paid at least three hours at minimum wage.
- An employee who shows up for work as scheduled or instructed, and then sent home, must be paid three hours at minimum wage.
- An employee, who is called in for a staff meeting that is less than three hours long, must be paid at least three hours at minimum wage. For example an employee making \$20.00 an

hour who is called in for a one hour meeting, would be entitled to be paid the set rate of pay of \$20.00 for that hour, unless the employer has specified minimum wage would be paid, then the entitlement would be \$17.70 (three hours at minimum wages).

Examples of when a three hour minimum wage payment is not paid:

- An employee who has been advised in advance not to report to work, but does report, would not be entitled to three hours at minimum wage.
- An employee, who is only available to work for less than three hours, would be paid for the hours that they actually worked. For example a student earning minimum wage is only available for work after school, between 4:30 p.m. and 6:00 p.m., would only be entitled to be paid for the time worked.
- If an employee works out of home, Employment Standards, by policy, will not enforce payment of 3 hours minimum wage. (See Module III)

The three-hour minimum is reduced to a two-hour minimum for employees in two categories:

1. part-time employees in recreation or athletic programs run by municipalities, Metis Settlements or community service organizations that are not operated for profit
2. school bus drivers

For example:

An employee, who teaches two 30 minute swimming lessons each weekday afternoon, would be entitled to at least the equivalent of two hours pay at minimum wage.

Note: By permit, the home care industry is also subject to the two-hour minimum.

Split Shifts

When an employee works a split shift, he/she is entitled to be paid at least 3 hours at the minimum wage for each shift. A reasonable meal period allowed in the middle of a shift does not make the workday into a split shift. If an employee requests and is granted an extended meal period, the payment of minimum wage for less than three hours, does not apply.

For example, an employee whose shift begins at 9:30 a.m., requests and receives a two-hour lunch break from 11:30 to 1:30 p.m. This is not considered a split shift, because it was the employee who requested a longer lunch break.

Employment Standards policy states, where the shifts are separated by a break in excess of one hour, an employee is entitled to be paid at least three hours at the minimum wage in the morning and again in the afternoon.

Deductions from Minimum Wage

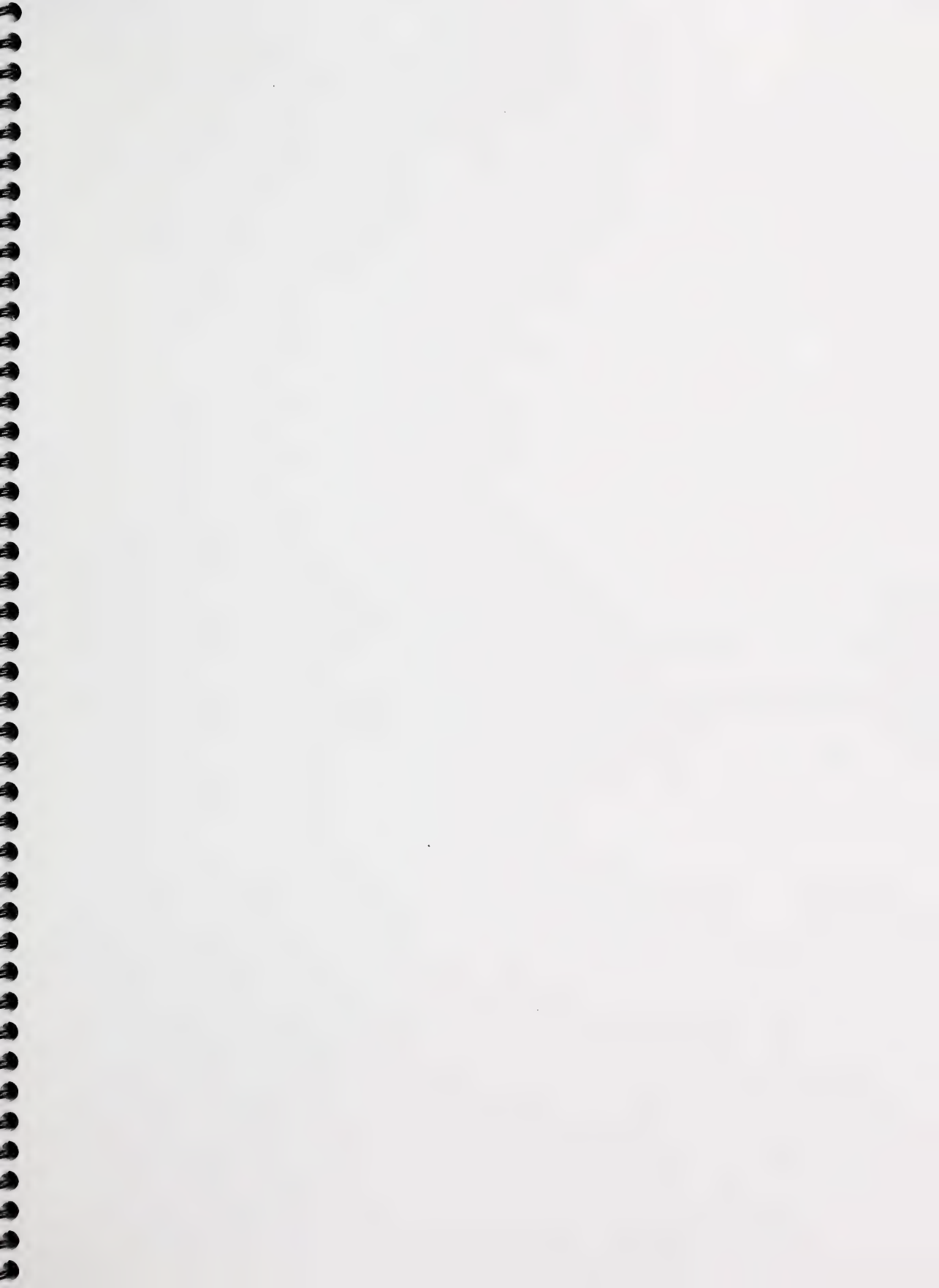
Board and Lodging

If board or lodging are provided by an employer, there are limits to the amount that can be deducted from an employee's minimum wage. An employer may deduct \$1.95 per meal consumed and \$2.60 per day for lodging.

In general, an employer must not make a deduction for any meal that is not consumed by the employee. This has, however, been interpreted to allow a deduction for a meal that was prepared for an employee according to the usual arrangement on the job, and then refused without notice.

Work clothes

When an employer makes deductions for supplying or looking after uniforms or other special articles that an employee is required to wear on the job, these deductions cannot reduce wages to less than the minimum wage. Deductions for uniforms cannot exceed the actual cost to the employer.



MODULE V - HOURS OF WORK AND REST

Hours of Work Confined

The Employment Standards Code requires that the hours of work of an employee be confined within a period of twelve (12) hours in any one day, unless:

- an accident occurs, urgent work is necessary to a plant or machinery, or other unforeseeable or unpreventable circumstances occur, in which case the hours of work shall be increased only to extent necessary to avoid serious interference with the ordinary working of the business, undertaking or other activity.
- the Director issues a permit authorizing extended hours of work.

As a result, an employee should be finished work for the day no more than 12 hours after he/she begins work on that day.

Notice of Work Times

The Code requires an employer to give employees written notice of when their work starts and ends. They can do this by posting schedules where employees can see them, or by any other reasonable method.

The posted schedule should include all required work periods for all employees for the entire period covered by the schedule.

Shift Changes

An employer must not require an employee to change from one shift to another without at least 24 hours written notice and an employee must be given eight hours rest between shifts.

Rest Periods

An employer must allow each employee a total of at least 30 minutes of rest, paid or unpaid, during each shift in excess of five (5) consecutive hours of work, unless:

- an accident occurs, urgent work is necessary, or other unforeseeable or unpreventable circumstances occur
- pursuant to a collective (union) agreement different rest provisions are agreed to; or
- it is not reasonable for the employee to take a rest period.

The breaks can be paid or unpaid, at the employer's discretion. However, if the break is unpaid, the employee cannot be called upon to provide service during the unpaid time.

Days off

The Code requires that an employee be given the following minimum amount of time off:

- one day of rest each week, or
- two consecutive days of rest in each 14-day period, or
- three consecutive days of rest in each 21-day period, or
- four consecutive days of rest in each 28-day period.

Note: this means the longest an employee can work is 24 days and then 4 consecutive days must be taken off work.

Compressed Work Weeks

A compressed work week (CWW) may be required or permitted by an employer.

In a compressed work week, fewer days are worked, in return for a greater number of hours worked per day. A compressed work week must meet the following conditions:

- be scheduled in advance,
- not exceed 12 hours per day,
- not exceed 44 hours per week, or
- not exceed 44 hours per week on average, if the work week is part of a cycle that spans more than one week.

The time an employee spends at work, including breaks cannot exceed 12 consecutive hours.

If the compressed work week is part of a multi-week cycle the schedule must show all the weeks that make up a cycle.

Daily hours in a schedule may be up to 12 consecutive hours a day to a total of 44 hours a week, before overtime is payable.

If an employee works more than the daily hours in the schedule, or more than 44 hour in any work week (or on average, if the work week is part of a cycle that spans more than one week), there will be overtime.

For additional information concerning CWW's, please review Employment Standards Fact Sheet No. 7 "Compressed Work Week Agreement").

Travel Time

In general, "home to work" and "work to home" travel time, regardless of method used, is not time spent working. If the employer pays the employee for this travel time, the payment would not generally be considered wages.

When travel time is NOT work

- If an employer asks an employee to report to or from a worksite and no service is being provided on the way to or from the site.
- If an employee is a passenger in a vehicle and is being transported to or from the worksite.

When travel time is work

- Travel time between job locations is considered to be working time because the employee is providing a service to the employer from the time they reported to the original work location. Therefore the payment for such "travel time" is wages.
- If an employee is directed to pick up certain materials or perform some other task either on his way to work or on his/her way home from the work location. The consider this time is paid work time.
- If an employee is directed by the employer to report to a given location the employee's hours of work will begin on arrival at that location. Any "travel time" that occurs after the time the employee reported to the worksite will be hours of work and any money paid is wages.

Note: Any "travel time" that occurs after the time the employee started to provide services must be recorded as "hours of work". Travel time hours may be paid out at a different rate of pay, as long as the employee is informed and the rate is at least minimum wage.

Stand-by time/On-call

Being "on call" or "on standby" does not in and of itself constitute work. An employer is not required to pay wages for the time an employee is waiting to be called to work. If work is done in the employee's home they would be entitled to their regular wage for all hours worked. If the employee is called to work away from home, the employee is entitled to at least 3 hours at the minimum wage for each call-out.

Training

When it is compulsory for an employee to attend the meeting or the meeting is directly work-related, the employer is required to pay the wage agreed to for the meeting (at least minimum wage), and overtime if applicable.

Once an employer/employee relationship has formed, any education or training requested or required by an employer is work. This includes situations where a new employee "job shadows"

a more experienced employee.

If the education or training is initiated by the employee, the agreement between the parties will determine whether or not the employee will be paid for training time.

The following examples are situations where training will not be considered work:

- obtaining qualifications necessary to be considered for hiring
- if, as a condition of hire, the employee agrees to obtain additional training at their own expense and on their own time
- if a test or training is given to a prospective employee as part of the hiring process.



MODULE VI - OVERTIME AND OVERTIME PAY

Most employees, including those who are paid a monthly salary, are entitled to overtime pay for overtime hours worked. The only exceptions are those employees, such as managers and supervisors, exempt from overtime by the Employment Standards Regulation.

The Basic 8/44 Rule

In most industries, overtime is calculated on the basis of 8 hours a day or 44 hours a week, whichever is the greater. However, there are some industries where the ground rules are different. Please refer to the chart at the end of this Module for these variations.

Note: If an employer establishes a work day of less than 8 hours or a work week of fewer than 44 hours (e.g. a 7 hour day and a 35 hour work week) overtime pay is still payable under the basic 8/44 unless the employer agrees to recognize overtime over lesser daily or weekly hours. The agreement may be contained in:

- a collective agreement,
- some other written agreement, or
- through consistent practice of an employer.

CALCULATING OVERTIME PAY

Work day, week and month

The Code defines a work day, work week and work month, for the purposes of calculating hours of work and overtime.

Generally, a work day will be the 24 period from midnight to midnight. However, an employer may also establish a different 24 hour period by consistent practice, for example 7 p.m. to 7 p.m. the next day.

The Code contains similar definitions for work week and work month. Unless an employer establishes a work week and work month by consistent practice, a work week begins and ends at midnight on Saturday and a work month is a calendar month.

Calculating of daily and weekly Hours basic 8/44 rule

1. Each day worked in the week must be considered individually. Any hours more than eight worked in each day will be "daily" overtime hours. Calculate the total "daily" overtime hours or the week.
2. Look at the week as a whole. Any hours more than 44 hours worked in the week will be "weekly" overtime hours. Calculate the total "weekly" overtime hours.

3. Compare the "daily" and "weekly" totals.
4. Pay the greater number of overtime hours.

Calculating overtime when pay period ends mid-week

Assume the employees work the following hours over these two months.

September	S	M	T	W	T	F	S
(week 1)	-	8	8	8	8	8	4
(week 2)	-	8	8	8	8	8	4
(week 3)	-	8	8	8	8	8	4
(week 4)	-	8	8	9	8	8	8
(week 5)	-	10	9*				

October	S	M	T	W	T	F	S
(week 5)				8	11	8	8
(week 6)	-	8	8	8	8	8	4
(week 7)	-	8	8	8	8	8	4
(week 8)	-	8	8	8	8	8	4
(week 9)	-	8	8	8	8*		

* end of pay period for computing wages and O/T

Looking at the 5th week, often the employer will pay the following:

September (week 5) 16 hours at regular rate
 3 hours at overtime rate

October (week 5) 32 hours at regular rate
 3 hours at overtime rate

The problem is that for the purposes of calculating overtime hours, the "week" does not end simply because the employer "cuts off" the payroll at mid-week. The correct amount of overtime due in week five is outlined below:

Week 5 for the example above							Total hours work	Daily overtime	Weekly Overtime	Overtime hours
S	M	T	W	T	F	S				
-	10	9	8	11	8	8	54	6	10	10

If, on the September pay cheque, the employer had paid the employee for three hours of the overtime worked in the 5th week, the employee would be entitled to the balance of seven hours of overtime pay on the October pay cheque.

An employer using a monthly/semi-monthly cut-off will not be aware of the additional overtime due until the completion of the week in which the cut-off falls. In the above example, since the next pay period ends on October 31, the additional seven hours of overtime must be paid within 10 days of the end of this pay period.

Calculating Hours of Work and Overtime for Salaried Employees

Salaried employees are treated no differently than employees paid in any other manner when calculating overtime hours. The salary is considered to cover payment only for the regular hours of work; overtime hours must be compensated in addition to the regular hour. To calculate the overtime rate of pay,

- 1) Divide the annual salary by 52 weeks to get the weekly salary
- 2) Divide the "weekly salary" by the number of regular hours normally worked in a week; this will give the hourly rate of pay for the salaried employee
- 3) The hourly rate of pay times 1½ is the overtime rate.

Additional Rules for Calculating Overtime Hours and Pay

When calculating overtime hours, note the following:

- Time off with pay instead of overtime pay (under a written overtime agreement) is considered to be "hours of work" when calculating daily and weekly hours of work.
- Hours of work on a general holiday for which a general holiday is paid at 1.5 the wage rate are not counted as hours of work for the purpose of calculating overtime hours. If however, the employee is paid straight time with another day off, the hours worked on the general holiday are counted for the purpose of calculating overtime hours.

(See Module VIII – for Overtime calculations for employees paid on an incentive basis)

OVERTIME AGREEMENTS

Under the Code, an employer and employee may agree in writing to paid time off in lieu of overtime hours worked. An overtime agreement allows the overtime hours to be banked and subsequently taken off, hour for hour, at a time the employee could have worked for the employer.

Time off in place of overtime is a **VOLUNTARY** agreement between the employer and employee(s), and neither can be forced into the agreement. There are two types of overtime agreements - an individual agreement and a group agreement. Agreements must be in writing; be signed by both parties; and must contain certain requirements.

An individual overtime agreement is between one employee and an employer. Either party can amend or cancel the agreement by giving the other party one month's notice in writing.

A group overtime agreement is between an employer and a designated group of employees. The agreement must be signed by the employer and a majority of the employees in the designated group. Again, the agreement can be amended or cancelled by either party giving one month's notice to the other. If the employees want to cancel the agreement, the notice to cancel must be signed by a majority of the employees affected by the agreement.

Overtime Agreement Rules

- a copy of the agreement shall be given to each employee affected by it
- when overtime hours are worked, they are “banked”
- the “banked” hours are given/taken off at a time when the employee(s) could have worked
- at least one hour of time off must be given for each hour of overtime worked
- regular wages are paid for the hours when they are given/taken off, at the rate of pay applicable when the time off is taken
- time off must be given/taken within three months at the end of the pay period in which the overtime hours were worked (an extension may be granted by the Director or may be contained in a collective agreement)
- if the time is not given/taken within three months, it must be paid out at time-and-a-half, the rate of pay in place on the day the three months expired.

Note: Copies of Agreements are included at end of Module.

OVERTIME VARIATIONS

INDUSTRY	DAILY	WEEKLY/MONTHLY
MISCELLANEOUS SERVICES (Field Catering, Geophysical Exploration, Land Surveying, Logging and Lumbering and Road Maintenance)	10 hours a day	191 hours a month (44 hours in a week for the first and last months, if hours work are less than 191)
HIGHWAY AND RAILWAY CONSTRUCTION AND BRUSH CLEARING	10 hours a day	44 hours a week
OILWELL SERVICING	12 hours a day	191 hours a month (44 hours in a week for the first and last months, if hours of work are less than 191)
AMBULANCE ATTENDANTS	10 hours a day	60 hours a week
TRUCKING (outside city limits)	10 hours a day	50 hours a week
TAXI CAB	10 hours a day	60 hours a week
IRRIGATION DISTRICTS (Salaried full-time employees, April 1 to October 31 each year)	9 hours a day	54 hours a week
NURSERY INDUSTRY	9 hours a day	48 hours a week

**INDIVIDUAL
OVERTIME AGREEMENT**

1. It is agreed between:

_____ of _____
Employee name Employee address

and

_____ of _____
Employer/company name Employer/company address

that either wholly or partly the employer will provide and the employee will take, time off with pay in place of overtime pay for those hours worked in excess of _____ in a day or _____ in a week comprising of _____ to _____.
(Day of the week) (Day of the week)

2. The time off with pay in place of overtime pay shall be provided, taken and paid at the regular rate of wages at a time that the employee could have worked and received wages from the employer.
3. The time off shall be provided, taken and paid within 3 months of the end of the pay period in which it was earned unless,
- (i) the agreement is part of a collective agreement which provides for a longer period of time, or
- (ii) the Director of Employment Standards issues a permit providing for a longer period of time.
4. If the time off in place of overtime pay is not provided, taken and paid in accordance with paragraph 2, the employee shall be paid at the overtime rate for all the overtime hours with respect to which time off was not provided, taken and paid.
5. Time off in place of overtime shall be treated as hours of work and remuneration paid in respect to time off in place of overtime pay shall be treated as wages.
6. The employer shall provide a copy of this agreement to the employee.
7. No amendment or termination of this agreement shall be effective without at least one month's notice in writing by one party to the other.

Dated this _____ day of _____ 20 _____

Signed _____
For employer/company

Employee

**GROUP
OVERTIME AGREEMENT**

1. It is agreed between:

The Employees Listed On Part A Attached

and

_____ of _____
Employer/company name Employer/company address
that either wholly or partly the employer will provide and the employees will take time off with pay in place of overtime pay for those hours worked in excess of _____ in a day or _____ in a week comprising of _____ to _____.
(Day of the week) (Day of the week)

2. The time off with pay in place of overtime pay shall be provided, taken and paid at the regular rate of wages at a time that the employees could have worked and received wages from the employer.
3. The time off shall be provided, taken and paid within 3 months of the end of the pay period in which it was earned unless,
- (i) the agreement is part of a collective agreement which provides for a longer period of time, or
- (ii) the Director of Employment Standards issues a permit providing for a longer period of time.
4. If the time off in place of overtime pay is not provided, taken and paid in accordance with paragraph 2, the employees shall be paid at the overtime rate for all the overtime hours with respect to which time off was not provided, taken and paid.
5. Time off in place of overtime shall be treated as hours of work and remuneration paid in respect to time off in place of overtime pay shall be treated as wages.
6. The employer shall provide a copy of this agreement to each employee affected by it.
7. No amendment or termination of this agreement shall be effective without at least one month's notice in writing by one party to the other.

I certify that the employees who have signed **Part B** attached to this form are the majority of the employees in the group described and named on **Part A** attached.

Dated this _____ day of _____ 20 _____

Signed _____
For employer/company

GROUP OVERTIME AGREEMENT – PART A and PART B

Part A (To be completed by Employer)

Description of Group: _____

(Provide a complete description, e.g. "all office employees", or "all shipping and receiving employees").

Following is a complete list of all employees who together form the group described above as of

Day	Month	Year
-----	-------	------

Type or print names legibly

[illegible]

Part B (To be completed by participating employees)

The employees whose signatures appear below wish to join the group overtime agreement attached to this form.

Signature

Print name legibly

Date _____

[illegible]

MODULE VII – GENERAL HOLIDAYS AND GENERAL HOLIDAY PAY

General Holidays in Alberta

Under the Employment Standards Code, the following days are recognized as General Holidays:

New Years Day	- January 1st
Alberta Family Day	- the third Monday in February
Good Friday	- varies with the religious calendar
Victoria Day	- the Monday immediately preceding May 25 th
Canada Day	- July 1 st **
Labour Day	- the first Monday in September
Thanksgiving Day	- the second Monday in October
Remembrance Day	- November 11th
Christmas Day	- December 25 th

** By Federal law, when July 1st falls on any day of the week other than Sunday, it is celebrated on that day; however, when it falls on a Sunday, it is treated as if it fell on the Monday immediately following.

Easter Monday, Heritage Day (the August holiday) and Boxing Day are not recognized as General Holidays in Alberta. However, an employer can designate these or any other day as a General Holiday in addition to the nine holidays listed. If an employer does so, the extra holiday(s) shall be paid in exactly the same way as the legislated holidays. If an employer at any time wishes to revoke an “extra” holiday, employees must be notified (preferably in writing) prior to the pay period in which the holiday falls.

Qualifying for General Holidays

An employee is eligible for holiday pay if he/she has worked for the same employer for at least 30 work days in the 12 month period preceding the general holiday. It does not matter if term of employment is broken or continuous.

An employee will be disqualified for general holiday pay if they:

- do not work on a general holiday when required or scheduled to do so, or
- are absent from employment, without consent of the employer, on the employees last regular work day before or the next regular work day following the general holiday.

Pay for General Holiday – Not Worked

An employee must be paid general holiday pay that is at least the employees’ average daily wage if:

- a general holiday falls on a day that would normally have been a work day for the employee, and
- the employee does not work on the general holiday,

Pay for General Holiday – Worked

If a general holiday falls on a day that would normally have been a work day for the employee, and the employee works on the general holiday, then the employee is entitled to be paid:

Option 1

- an amount that is at least the employee's average daily wage, and
- an amount that is at least 1.5 times the employee's wages for each hour of work the employee works on that day

or

Option 2

- an amount that is at least the employee's wage rate and overtime rate if overtime is worked, and
- one day off,
 - to be taken not later than the employee's next annual vacation,
 - to be taken on a day that would normally be a work day for the employee,
 - with general holiday pay to be paid in an amount at least equal to the employee's average daily wage.

Regular Schedules

An employee may work different hours on different days of the week, but in a **predetermined and repetitive** pattern (for example: four hours on Monday, Tuesday and Wednesday; eight hours on Thursday; four hours on Friday; and eight hours on Saturday).

In this situation, it is acceptable practice to pay the employee for the number of hours normally worked by the employee on the day of the week on which the holiday fell. (In this example, the employee would get four hours' pay if the holiday fell on a Monday and eight hours' if it fell on a Saturday).

Irregular Schedules

Some employees work irregular schedules, making it hard to tell whether the general holiday falls on one of the employees' normal working days. If in at least five of the nine weeks preceding the work week in which the holiday occurs, the employee worked on the same day of

the week as the day on which the holiday falls, the general holiday is to be considered a normal working day.

Irregular schedules occur when:

- employees work an irregular number of hours each day (i.e., hours scheduled on any given day depend on work available);
- employees work an irregular pattern of days in a week (i.e., employee is scheduled to work only on days that work is available).

Calculating Average Daily Wage

To calculate the average daily wage for an employee:

- add up the total wages earned in the 9 week period preceding the holiday.
- add up the number of days actually worked in the period.
- divide the total wages by the number of days to get the average daily wage.

Note: Always begin with the first full week immediately before the holiday. If the employee has worked less than 9 weeks, the average is calculated on whatever shorter period the employee has worked.

Acceptable Alternatives for calculating Average Daily Wage

Qualified employees must receive payment of an amount at least equal to their average daily wage. The following methods of payment are acceptable variations for meeting this obligation. If using an alternative method, the employer is obliged to ensure it is consistently applied.

Salaried Employees

If an employee:

- receives a salary,
- does not work on the general holiday, and
- still gets paid their full salary as usual,

Employment Standards accepts the employee has received their general holiday pay for that day. No further calculation is needed.

General Holiday Pay – Additional Rules

Shifts occurring partially on holidays

General rule: is to follow the employer's established practice in determining whether the shift in question falls on the general holiday. If the employer's practice is not clear, the following guidelines apply:

- If an employee's shift begins on the day before a general holiday and ends during the holiday, all hours worked on that shift will be credited to the day preceding the holiday, and,
- If the employee's shift begins on the general holiday, all hours worked during the shift will be credited to the day of the general holiday and would be paid as described above.

For example, if the employer has established the work day from 11p.m. to 11 p.m. and the employee begins work at 11p.m. on the day of the holiday, all hours worked on that shift would be deemed hours worked on the holiday.

Some employers have the practice of paying employees general holiday pay at 1.5 times their wage only for the hours worked on the actual general holiday. If consistently followed, this practice is also acceptable.

General Holiday Pay and Overtime

The Code says that where an employer chooses to pay for hours worked on the general holiday pay at 1.5 times the employee's wage rate, the hours worked on the holiday do not count when calculating overtime hours worked for the week in which the general holiday falls.

For example:

Week of the General Holiday

Days	S	M	T	W	TH	F	SA
Hours Worked	-	10	8	11	8	8	11

The Holiday falls on a Monday. The Employee normally works 8 hours on that day and works 10 hours on the holiday. In the example above the employee would be paid general holiday pay of 10 hours at 1.5 times the regular wage rate and 8 hours at the regular wage rate (average daily rate). The rest of the weeks' pay would be calculated using 46 hours, 40 hours regular time and 6 hours of overtime.

Holidays during annual Vacation

If an employee would have been entitled to the general holiday if they were not on vacation, then:

- The employer must give the employee a holiday plus general holiday pay at least equal to the employee's average daily wage
- The holiday must be taken either
 - on what would have been the employee's first day back to work after the vacation, or
 - by agreement with the employee, on another day that is
 - after the annual vacation
 - on what would normally be a working day
 - before the employee's next annual vacation

Holiday Pay owed at termination if substitute day off not taken

Employment Standards policy is that, if the employee

Is terminated: The employee is entitled to be paid general holiday pay as calculated under Option 1. That is, go back and treat the days as if the employer had elected Option 1, subtracting the wages actually paid from the amounts that are due.

Quits: The employee is entitled to be paid his or her average daily wage for each general holiday deferred and still not taken.

Accumulated general holidays cannot be given off as part of a notice of termination.

Holiday entitlements during lay-off or leave of absence

Employment Standards policy states that if a leave of absence or lay-off is longer than two weeks an employee is not entitled to any general holidays which occur during the time he is off work.

Employees who work fewer than three hours

If an employee works fewer than three hours on a General Holiday the rule regarding three hours at minimum wage applies. For example an employee who is eligible for general holiday pay and works on a holiday would be entitled to an average days pay, plus time and half at there wage for the hours worked or three hours at minimum wage, whichever is higher.

General Holiday Pay for Construction Workers

A construction worker who is employed at the site of, and actually involved in, a construction project is entitled (by Regulation) to receive at least 3.6% of his/her regular wages, on or before December 31st of each year, or on termination of employment whichever occurs first.

Option 1 - Employee is paid general holiday pay. [Section 29(c)]

Step 1:

Calculate average daily wage

Average daily wage = Wages in previous 9 weeks - \$2,200
Divided by Number of days worked – 40 = \$55.00

Step 2:

Calculate minimum compensation entitlement in pay period of the general holiday

Regular hours - 70 x \$5.90 (minimum wage) = \$413.00
Overtime hours - 12 x \$8.85 (1.5 x \$5.90) = \$106.20
Minimum pay for the general holiday
Average daily wage \$55.00
(hours worked) x (1.5 times minimum wage rate) - 7 x \$8.85 = \$61.95
Minimum compensation entitlement in this pay period = **\$613.15**
Total commissions earned in the pay period **\$950.00**

The greater of these two amounts is owed to the employee **\$950.00**

Option 2 - Substitution of general holiday [Section 29(d)]

As the employer can not provide a day off on "a day that would normally be a work day for the employee" since the employee works unpredictable hours, this option is not available to employers and employees where the hours worked are irregular.

*As the employee has no established hourly rate of pay the minimum wage will be used for the purpose of calculating overtime pay and general holiday pay. [Section 32(1)].

MODULE IX -VACATION AND VACATION PAY

Vacations are given to ensure that employees have a rest from work without loss of income and return to work refreshed.

Earning Vacation Entitlements

An employee must work for his/her employer for 12 months before an annual vacation is earned. Vacation **pay** and **time off**, accrue during the 12-month period. An employee therefore qualifies to take vacation twelve months after his/her anniversary date (the day the employee started to work for the employer) and on each anniversary date thereafter.

Vacations must be granted in one unbroken period, unless the employee requests a shorter period in writing, in which case the vacation may be taken in periods of not less than one day.

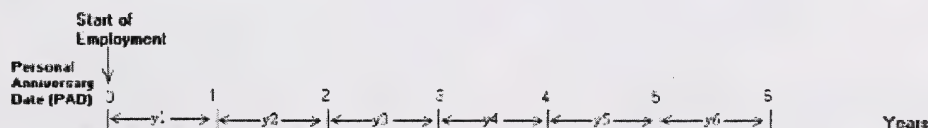
An employer must give employees their annual vacation within 12 months of the date it is earned.

After	Employee must get an annual Vacation of at least
1 year of employment	2 weeks
2 years of employment	2 weeks
3 years of employment	2 weeks
4 years of employment	2 weeks
5 years of employment	3 weeks
6 and more years of employment	3 weeks

Note: If the employer agrees to provide more vacation, that agreement replaces the Code's annual vacation requirements.

Vacation and Vacation Pay Entitlements

No Common Anniversary Date



Vacation Pay – Monthly Salary

For those employees paid by monthly salary, the Code stipulates that the employer must pay an amount at least equal to the employee's current salary for a normal work week. For an

employee paid a monthly salary a week's wages would be calculated by dividing the wages for normal hours of work in a work month by 4.33.

For employees paid by the month, note that vacation pay is based on the employee's wages (current salary) at the time the vacation is taken.

Vacation Pay – Other than Salary

Those employees entitled to vacation of two weeks are to be paid vacation pay of at least 4 per cent of wages for the year of employment for which the vacation is taken. Employees entitled to a vacation of three weeks are to be paid vacation pay of at least 6 per cent of wages for the year of employment for which the vacation is taken.

When vacation pay is to be paid

The Code enables an employer to pay vacation pay at any time as long as it is paid no later than the next regularly scheduled pay day after the employee starts his or her annual vacation.

If vacation pay is not paid before the employee's vacation starts, the employee may request their employer to pay the vacation pay at least one day before the vacation starts, and the employer must comply with the request.

Adjustment Required – Vacation Pay on every Cheque

If an employee is paid 4 per cent vacation pay on each pay cheque throughout their employment beginning on the day immediately after five years of employment, the employer begins paying 6 per cent vacation pay on each pay cheque. The employee, however, is entitled to 6 per cent of their wages from the previous year to coincide with their three weeks upcoming vacation.

In this case the employer would make a one time adjustment to the employee's vacation pay not later than the next regularly scheduled pay day after the employee starts their three-week vacation. The employer must pay the employee 2 per cent of the wages earned by the employee in their fifth year of employment.

Common Anniversary Date

It is more convenient for some employers to establish the same anniversary date (called a *common anniversary date*) for some or all of their employees. If a common anniversary date is established, the employer must ensure each employee affected still receives the same amount of vacation pay and vacation time off, they would have been entitled to if the common anniversary date had not been established.

If an employee has a common anniversary date, the employee is entitled to annual vacation as follows:

- on the first common anniversary date after the employment starts with the employer, at least 2 weeks' vacation or a proportionately lesser period of vacation if the employee has been employed for less than one year;
- on the 2nd, 3rd, 4th and 5th common anniversary date after employment starts with the employer, at least 2 weeks' vacation;
- on the 6th common anniversary date after employment starts with the employer, at least 3 weeks vacation, and vacation for the period that the proportion referred to in (a), if any, bears to one week;
- on the 7th and subsequent common anniversary dates after employment starts with the employer, at least 3 week's vacation.

Vacation and Vacation Pay Entitlements

With Common Anniversary Date (CAD)



The period after	Vacation and vacation pay entitlements		Vacation pay entitlements on termination
	Those not paid by the month	Paid by the month	
Start	No entitlements	None	4% of period y1 wages to date of termination
CAD 1	2 weeks prorated to period y1, plus 4% of period y1 wages	2 wks. prorated to y1 with pay*	Vacation pay entitlement to CAD1 not yet paid, plus 4% of period y2 wages to date of termination
CAD 2	2 weeks, plus 4% of period y2 wages	2 weeks with pay*	Vacation pay entitlement to CAD2 not yet paid, plus 4% of period y3 wages to date of termination
CAD 3	2 weeks, plus 4% of period y3 wages	2 weeks with pay*	Vacation pay entitlement to CAD3 not yet paid, plus 4% of period y4 wages to date of termination
CAD 4	2 weeks, plus 4% of period y4 wages	2 weeks with pay*	Vacation pay entitlement to CAD4 not yet paid, plus 4% of period y5 wages to date of termination
CAD 5	2 weeks, plus 4% of period y5 wages	2 weeks with pay*	Vacation pay entitlement to CAD5 not yet paid, plus 4% of period y6 wages to date of termination
After PAD 5			Additional entitlement: 2% of period A wages
CAD 6	3 weeks, plus 6% of period y6 wages, plus Additional entitlement: 1 week prorated to period A plus 2% of period A wages	3 weeks with pay* Plus: 1 week prorated to A with pay*	Vacation pay entitlement to CAD6 not yet paid, plus 6% of period y7 wages to date of termination, plus Additional entitlement: 2% of period A wages
CAD 7	3 weeks, plus 6% of period y7 wages	3 weeks with pay*	Vacation pay entitlement to CAD7 not yet paid, plus 6% of period y8 wages to date of termination

ADDITIONAL RULES ABOUT VACATION PAY

Disagreement about Vacation dates

Usually, employers and employees are able to agree on a mutually convenient date or dates for annual vacations. However, if they cannot agree, it is up to the employer to give the employee at least two weeks' written notice of when an employee's vacation is to start, and the employee must take their vacation at that time.

Timing of Vacation Pay

An employer may pay vacation pay at any time, but must pay vacation pay to each employee no later than the next regularly scheduled pay day after the employee starts annual vacation or on termination. If the employee requests vacation pay be paid in advance, the employer must do so at least one (1) day before the vacation starts.

What is included in "Wages" when using the percentage method

The Code requires that Vacation Pay be paid on "wages", *which includes any previously paid vacation pay*. For example, an employee, paid other than monthly salary, who has completed two full years of service, would be paid vacation pay as follows:

After Anniversary Date Year One:

Owed in second year of Employment

Earned \$24,000 x 4% = \$960.00 vacation pay

Owed in third year of employment

$(\$24,000 + \$960.00) \times 4\% = \$998.40$ vacation pay

The following DO NOT come within the definition of wages, therefore vacation pay DOES NOT have to be paid on:

- a) **Overtime earnings** (except where there is an overtime agreement in place allowing for banked overtime hours to be paid at straight time when given off -- these straight-time earnings are included as "wages" when calculating vacation pay)
- b) **General Holiday Pay**
- c) **Pay in lieu of notice of termination**
- d) **An unearned bonus**

Reduction of Vacation Entitlements

An employee's annual vacation period can be reduced if he/she is absent from work (maternity/adoption leave included). The reduction in vacation may be made in proportion to the number of days the employee was or would normally have been scheduled to work, but did not. For example, an hourly paid employee who is entitled to 3 weeks vacation is away sick for 40 working days. The employee was scheduled to work 250 days in that year. Vacation time entitlement can be reduced using the following formula: $3 \text{ weeks} \times 210/250 = 2.52 \text{ weeks}$.

Vacation Pay owed upon Termination

If the employment terminates before an employee is entitled to take his/her first vacation, the employer must pay the employee 4 per cent of employee's wages earned during employment.

In other cases, the employer must pay vacation pay equal to the amount the employee would have been entitled to be paid in that year of employment if he/she had remained employed and

- for employees entitled to two week's vacation, at least four per cent of the employees wages for the period from the date the employee was entitled to an annual vacation to the date employment terminates, or
- for employees entitled to three weeks' vacation, at least six per cent of the employee's wages for the period from the date the employee last became entitled to annual vacation to the date employment terminates.

Vacation Pay for Construction Workers

A construction employer must pay each construction employee vacation pay in the amount of least 6 per cent of the employee's wages.

The vacation pay is to paid

- on or before December 31 each year, or
- on the day before the construction employee begins an annual vacation, if an annual vacation is given.

The employer may pay vacation pay each pay period or at any other time during the year. If the employer does not pay the employee vacation pay earlier in the year, then all outstanding entitlements are payable on December 31.

If the employer gives annual vacation, the Regulation requires an employer to pay the vacation pay on the day before the annual vacation.

If the employment is terminated, whether by the employee or the employer, vacation pay, along with all other earnings outstanding, is due within 10 days.

MODULE X – TERMINATION

Termination of Employment

The Employment Standards Code requires both employees and employers give each other notice of their intention to end the employment relationship. In both cases, if the period of employment is three months or less, no notice is required from either party.

The intent of notice is to give each party advance warning that the job will be ending, to allow them to take the necessary steps to either look for another job or look for another employee.

Notice of Termination - Employee

If an employee wishes to resign, he/she must give the employer written notice:

- of **one week**, if he/she has more than 3 months' but less than 2 years' of service
- of **two weeks**, if more than 2 years' service

Notice is not required if:

- the employee quits because his/her personal health or safety is at risk
- continuing to work has become impossible due to unforeseeable or unpreventable circumstances beyond the control of the employee
- the employee's earnings have been reduced
- the employee is temporarily laid off

Notice of Termination - Employer

Where an employer wishes to terminate an employee's employment, notice is required, based on the employee's length of service:

- | | |
|-----------------------|-----------------|
| - Over three months | 1 weeks' notice |
| - Two years or more | 2 weeks' notice |
| - Four years or more | 4 weeks' notice |
| - Six years or more | 5 weeks' notice |
| - Eight years or more | 6 weeks' notice |
| - Ten years or more | 8 weeks' notice |

Employer's option to advance termination date

There are two options under the Code for an employer who wishes to advance the termination

date, depending on whether the employee gives minimum termination notice required or a longer notice.

1. If the employee gives the minimum termination notice required by the Code, the employer can advance the termination date by paying the employee an amount that is at least equal to the wages the employee would have earned if the employee had worked their regular hours for the remainder of the notice period given by the employee.
2. If the employee gives a longer notice of termination than the minimum required by the Code, and the employer wishes to advance the termination date, the employer must pay an amount that is at least equal to the wages that employee would have earned if the employee had worked their regular hours for the remainder of the termination notice period the employer is required to give an employee under the Code.

However, if the employee has provided more notice than required, but less notice than required from an employer under the Code, Employment Standards policy is to enforce the notice period provided by the **employee**.

A special situation arises where the employee provides greater notice than that required from an employee and employer under the Code. In such a case, unless there is a special agreement between the employer and employee, the employer will be entitled to terminate the relationship, without additional notice to the employee, as soon as the employee has worked for longer than the notice period required from the employer under the Code.

Contents of Notice

To be valid, the termination notice must be

- in writing, addressed to the employee concerned
- given or otherwise provided to the employee (posting it on a bulletin board is not sufficient)
- for the correct notice period or longer.

Determining Length of Service

An employee's "length of service" is the time the employee has worked for the business. It can include more than one period of employment if the breaks between periods are not longer than three months.

If a business, or any part of it, is bought, sold, leased or transferred, and an employee continues working for the business, he/she carries with him/her all previous length of service, and would be entitled to notice of termination based on his/her full length of service with the business.

Pay in lieu of notice

If an employer, for any reason, does not wish to have an employee work out a notice period, he/she may give the employee pay in place of the amount the employee would have earned had the employee worked out the required notice period.

Pay in lieu of notice (or termination pay) **is not** a “penalty” against the employer for dismissing an employee; it is intended to provide an economic cushion for the employee who is not given advance notification that his/her job will be ending, while he/she looks for other work.

An employer may combine notice (which the employee works out) and pay in place of notice, to make up the required notice period.

Calculating Termination Pay

Termination pay must be at least equal to the wages the employee would have earned if the employee had worked his or her regular hours for the termination period.

Sometimes an employee's wages vary from one pay period to another. In this case, the weekly average of employee's regular wages for the 3 month period (13 weeks) immediately preceding the date of termination is used to determine the employee's termination pay.

Situations where no termination notice is required

The more common examples where notice is not required to be given are:

Construction Workers

Employees defined as construction workers do not have to be given notice of termination or pay in lieu. This is because employees in this industry are usually hired for the duration of a particular project and the employer generally cannot forecast exactly how long the project will take to complete.

This exemption does not cover office workers in the construction industry or people employed to perform ongoing maintenance, such as a building janitor.

Fixed Term or Task

A “fixed term” job is one that lasts a definite length of time, which is less than one year. The employee knows, at the time of beginning the job, when it will end, so further notice is not required. A “task” is a job or a project, lasting less than one year, for which the employee has been hired. The employee can see the completion of the project approaching, so again no further notice is required. However, if the employee is dismissed before the job or task is completed, normal notice requirements would apply.

Seasonal

Where an employee is hired for a season, such as snow removal in the winter, or additional retail help for the Easter or Christmas season, notice is not required when the employee is released at the end of the season. However, if the employee is dismissed before the season ends, or is kept on after the end of the season, normal notice would apply.

When an employee can elect whether or not to work

An employer may terminate the employment of an employee, without notice, when the employee is employed under an agreement by which the employee may elect to work or not for a temporary period, when requested to work by the employer.

An employee who may elect to work or not is usually employed as a casual employee. Typically, an employer needs to fill in a shift, calls up an employee on a casual employee list, and offers the employee work on the shift. The employee may elect to work that shift or not. There are no consequences on an employee if they elect not to work the shift.

Temporary Lay-off

Under the Employment Standards Code, this is a *temporary ceasing of work **with the intent to recall***. An employee may be laid off without notice or pay in lieu for a period of less than 60 days. If the employee is not recalled and working within 60 days, the lay off becomes a termination, and pay in place of notice would be owed at that time.

An employer may maintain the employment relationship beyond the 60 days by making regular payments to or on behalf of the employee, such as continuing to pay employee pensions or benefit package. Termination pay is payable when benefits cease.

If there is a collective agreement which contains recall rights following lay off, employment terminates and termination pay is owed when recall rights expire.

Reasonable Alternative Employment

An employer may terminate the employment of an employee without notice if the employee refuses an offer of reasonable alternative employment.

Employment Standards policy is that the key elements of a reasonable offer are

1. The offer by the employer must be made in way that
 - the employee clearly understands that there is choices to be made, and
 - the employee clearly understands the off of employment available.

The offer should be made in writing and contain details such as duties, hours or work, wage rate and other benefits, unless these are common knowledge.
2. Reasonable alternative work is a relative term based on situation-specific judgements.
3. There are certain things which must be considered
 - The employee should be able to perform the new work or necessary training should be part of the offer
 - The employee should have the capacity to perform the new work

- Earnings (pay and benefits) should be within the realm of former earnings, unless circumstances warrant a significant reduction

All job related factors such as, distance to work, level of responsibility, conditions of work and climate, would also be taken into consideration.

Just Cause

An employer may terminate the employment of an employee without notice, for just cause.

Just cause typically involves conduct that is sufficiently serious (either on its own account or in combination with other factors) to justify the employer ending the employment relationship. Each case must be looked at individually. Over the years, Employment Standards has established general principles for deciding whether or not just cause for termination exists.

It is Employment Standards' policy to consider the following conduct as likely to constitute just cause for termination of employment, without notice:

- The conduct must have been intentional. The employee must have intended the result of his or her action. Actions resulting from stupidity, incompetence, or events caused by an involuntary or unintentional chain of events are not usually considered sufficient reason for immediate discharge (repeated occurrences can affect the situation).
- Failure to obey illegal or unreasonable instructions or failure to obey instructions that would clearly jeopardize the health of an employee, or would break commonly known safety requirements, does not constitute just cause for discharge.
- The rules or regulations an employee is alleged to have broken, and for which the employee is to be punished by discharge, must be known to the individual involved, must be applied without discrimination, and must be reasonable, given the nature of the employment.

The employer is responsible for proving dismissal is justified. In particular, the employer must establish that the employee was aware of the consequences of failure to perform certain duties or obey certain rules. Past forgiveness of employee conduct, either directly or through failure to make mention of the matter to the employee, prevents any use of past incidents in future termination matters.

The following factors are considered when determining dismissal for just cause:

- The discipline record of the claimant.
- The length of service of the claimant.
- Prior warnings given to the employee relating to the specific cause for termination relied on by the employer.
- Whether or not the offence was an isolated incident in the employment history of the claimant.
- Provocation, either physical or verbal.
- Whether the conduct was on the "spur of the moment" as a result of a momentary aberration, due to strong personal impulses, or whether the conduct was premeditated.
- Whether the employer's rules of conduct, either unwritten or posted, have been uniformly enforced.

- Whether the conduct was intentional and the circumstances surrounding the conduct (for example, whether the claimant misunderstood an instruction given, and as a result disobeyed it).
- The seriousness of the conduct in terms of the employer's policy and employment obligations.

The onus is on the employer to show that the employee's conduct is sufficient to terminate the employee without notice or termination pay. The employer must show more than mere dissatisfaction with the employee's performance. Real misconduct or incompetence must be demonstrated. Examples of just cause for dismissal include:

Misrepresentation of Qualifications

If an employee misrepresents skills and qualifications in order to get hired, the employer has just cause for dismissing the employee upon ascertaining his or her true abilities.

Sexual Harassment

Any unwanted or coercive behavior which is sexual in nature and, directly or indirectly, adversely affects or threatens to affect a person's job security is sexual harassment and is just cause for dismissal.

Breach of Duty

Breach of duty is just cause for dismissal. It usually occurs when an employee:

- knowingly jeopardizes the interests of the employer
- divulges confidential information
- breaches company policies
- conceals facts of which the employer should have been told
- displays dishonesty towards the employer
- takes actions which could seriously damage the employer's reputation
- fails to provide full-time service when the employee contracted with the employer to do so
- fails to report dishonesty of other employees
- deliberately refuses to follow employer guidelines and policies

Conflict of Interest

Just cause for dismissal exists when an employee uses special information obtained while employed for their own purposes, and without the consent of the employer.

Competing with employer's interest

Following are some examples of competing with employer's interests which can constitute just cause for dismissal:

- establishing a competing business while in employer's employ
- soliciting employer's customers for a new business
- personal involvement with employer's competitors
- breach of confidence
- taking benefits from competitors

Just cause for dismissal has been established when only a potential for conflict exists.

Willful Disobedience

Willful disobedience occurs when an employee disobeys an employer's lawful and reasonable order. Willful disobedience is just cause for dismissal. Factors to be looked at include:

- order must be given and must be clearly communicated to employee
- order must be clear and specific or must be a breach of policies and procedures well known to the employee
- order must be within the scope of the employee's job duties
- order must be reasonable and lawful and of some importance
- disobedience must be intentional
- if there is a reasonable excuse for non-performance given by the employee, just cause for dismissal will not be established.

Theft

Theft is just cause for dismissal. There must be tangible evidence that the employee committed the theft.

Fraud and Dishonesty

Any fraudulent activity committed by an employee is just cause for dismissal. Unless the employee is in a position of trust, the fraud:

- must be committed against employer or as a part of the job
- must be deliberate (intent to defraud must exist)

If there is a reasonable explanation for the employee's dishonesty, just cause for dismissal may not exist, but the onus now reverts to the employee to provide a reasonable explanation.

Insolence and Insubordination

Rude and provocative behavior toward the employer can be just cause for dismissal. It must be deliberate. If there is a reasonable excuse, such as provocation, or a personality clash, just cause for dismissal will not exist.

Absenteeism or Lateness

Repeated excessive absences or lateness, even if for a valid reason is just cause for dismissal. It must be a misconduct of significance and must be the fault of the employee. Examples include

- failing to return to work after vacation
- leave of absence without notifying the employer
- taking time off under false pretenses
- chronic tardiness which is intentional and deliberate

Illness

Temporary illness or disablement is not just cause for dismissal. Permanent illness or disablement may be.

Intoxication and Substance Abuse

Intoxication and substance abuse, in themselves, are not just cause for dismissal. It is the consequences of intoxication/abuse that are significant.

Serious Incompetence

The failure to exercise the skill and ability the employee claims to possess is just cause for dismissal. To prove incompetence:

- the employer must set objective standards of competence required and make them known to the employee
- the incompetence must be serious enough to justify dismissal.

For an employer to use incompetence as just cause for dismissal, the employer must establish the level of job performance required and communicate this standard to the employee. Employers must give their employees suitable instruction and supervision to enable them to meet the standard required.

Personality Conflict

The inability to get along with fellow workers is not just cause for dismissal.

“Wrongful Dismissal” actions and employment standards claims

The Employment Standards Code deals only with notice of dismissal, or pay in place of notice if not given. The employee may still attempt to sue in a civil court for “wrongful dismissal” or severance pay, and may collect for such things as loss of potential earnings.

Situations where no dismissal is allowed

Generally speaking, an employer has the right to release an employee at any time, provided the required length of notice or pay in lieu is given. The major exception is where the dismissal is in violation of Human Rights legislation.

Complaints about Improper Suspension, Termination or Lay - Off

An Improper Suspension, Termination or Lay off would be considered under the following conditions:

- after the employee started maternity leave or because the employee was entitled to or had started adoption leave, unless the business undertaking or other activity of the employer is suspended or discontinued,

- for the sole reason that garnishment proceedings are being or might be taken against the employee,
- because the employee gave evidence or may give evidence at any inquiry or in any prosecution under the Code,
- because the employee requested or demanded anything to which the employee is entitled under the Code, or
- because the employee made or is about to make any statement or disclosure that may be required of the employee under the Code,

In these situations, the Director of Employment Standards can order the employee's reinstatement and/or the payment of lost earnings to a maximum of six (6) months.

MODULE XI - MATERNITY AND PARENTAL LEAVE

Maternity and parental leave are employee entitlements set out in the *Maternity and Parental Leave Regulation*. The legislation entitles employees, who qualify, to a period of leave without pay at the end of which they must be reinstated in their old or equivalent job.

Length of Leave

The birth mother can take up to 52 consecutive weeks of unpaid job-protected leave. This is made up of 15 weeks maternity leave and 37 weeks parental leave.

Fathers and /or adoptive parents will be eligible for up to 37 consecutive weeks of parental leave. This leave may be taken by one parent or shared between them.

Parental leave may be taken by one parent or shared between two parents but the total combined cannot exceed 37 weeks.

Eligibility and Notice Requirements for Employees

Employees must have 52 consecutive weeks of employment with their employer to be eligible for maternity and/or parental leave.

Notice prior to leave

An employee must give the employer at least 6 weeks written notice of when she intends to start maternity leave.

- The employer may demand a medical certificate certifying pregnancy and giving the estimated date of delivery.
- If the employee fails to give the necessary notice she is still entitled to maternity leave if she notifies the employer within 2 weeks of her last day at work and provides a medical certificate.

An employee who takes maternity leave is not required to give her employer notice before going on parental leave, unless she originally agreed to only take 15 weeks of maternity leave.

An employee other than the mother wishing to take parental leave must give the employer at least six weeks written notice.

- Parents are still eligible for the leave if medical reasons, or circumstances related to the adoption, prevent the employee from giving this notice. If this happens, written notice must be given to the employer as soon as possible.

Employees who are planning to share parental leave must advise their respective employers of their intention to do so.

Notice at end of leave

An employee must give four weeks written notice of their intention to:

- return to work at the end of a leave,
- change their return date, or
- not return after the leave.

An employer does not have to reinstate an employee until the notice has expired.

If an employee fails to provide this notice, or fails to report to work the day after their leave ends, the employer is under no obligation to reinstate the employee unless the failure is the result of unforeseen or unpreventable circumstances.

Employer Obligations

Employment Standards does not require employer's to make payments to the employee, or pay for any benefits, during maternity or parental leave.

An employer cannot terminate an employee on maternity or parental leave, unless the employer suspends or discontinues the business. In the case of suspension or closure of operations and employer is required to give priority to hiring the employee who had taken leave if operations resume within 12 months after the end of the leave.

MODULE XII – ADOLESCENTS AND YOUNG PERSONS

The Employment Standards Code places restrictions on the employment of people under 18 years old. The rules differ, depending on the age of the individual involved. These rules concern, if, when, and where the individual can be employed.

Adolescents (AGED 12 TO 14)

May be employed as a:

- delivery person of small wares for a retail store,
- clerk or messenger in an office
- clerk in a retail store, or
- delivery person for the distribution of newspapers, flyers or handbills.

The employer must ensure the employment is not , or is not likely to be, injurious to the life, health, education or welfare of the adolescent.

Those between the ages of 12 and 14:

- May work two hours on a school day, or eight hours on a non-school day
- **Shall NOT** be employed between 9 p.m. and 6 a.m. the following morning

The written consent of the parent or guardian must be obtained and on file before the adolescent is employed.

Adolescents can be employed in other occupations than those listed only if the Director of Employment Standards has issued a permit prior to hiring. Conditions may be attached to the approval of the permit. For example, an adolescent may be prohibited from handling hot objects or substances in the restaurant/take-out food industry.

Note: An adolescent is limited by the Employment Standards Regulation to work a maximum of 2 hours on a school day. Therefore, if an adolescent works less than 2 hours on a school day, he/she must receive no less than 2 hours at minimum wage for the worked hours.

Young Persons (AGED 15 TO 17)

The Employment Standards Code does not prohibit a young person for working any occupation, however, if they are employed in:

- a place selling food or drink,
- a retail store,
- a gas station, or
- a hotel or motel

and they work between 9 p.m. and midnight, they must be under the constant supervision of someone over 18 years of age, **AND CAN NOT WORK BETWEEN MIDNIGHT AND 6:00 A.M.**

In any other kind of occupation a young person working between midnight and 6:00 a.m. must be under constant supervision.

**The written consent of the parent or guardian
must be obtained and on file before a
young person can work between midnight and the following 6:00 a.m.**

QUIZ #1

Module III – Employment Records and Payment of Earnings

1. If an employee is paid salary the employer is not required to keep track of daily hours of work?
a) True b) False
2. In Alberta a pay period can be any period from daily, weekly, monthly or quarterly?
a) True b) False
3. When must an employee be paid if they have given and worked out their notice.
a) Within one week
b) 3 days after their last day worked
c) 10 days after their last day worked
4. An employee paid by monthly salary was off sick for two days and the employer Deducted two day's pay from that month's pay cheque. The employee claims that the employer cannot make that deduction because he is paid monthly and not for how many hours or days worked in a month. Is the employee correct?
a) Yes b) No
5. An employer has the right ask his employees to designate a bank account into which their wages can be paid by direct deposit?
a) Yes b) No
6. When must an employee be notified of any reduction in earnings?
a) prior to pay period
b) two weeks before the reduction
c) 1 month notice
7. Must the notice relative to (6) above be in writing?
a) Yes b) No
8. In Alberta, how long must an employer keep payroll records?
a) 7 years
b) 5 years
c) 3 years

9. An employee requests, and is given, a \$4,000 loan from his employer to pay some moving expenses and help him "over the hump". He agrees in writing to repay \$100 bi-weekly pay period. Six months later the employee quits without notice, and the employer applies outstanding wages and vacation pay against the loan. Is the employer allowed to do this?
- a) Yes b) No
10. Bill started working for Pizza Pizzaz on March 1. The pay period cut-off is March 25th. What is the last day on which Bill should be paid his wages for work performed up to the end of the pay period?
- a) April 2
b) April 10
c) April 3
11. An employee is allowed ½ day a month paid sick leave?
- a) Yes b) No
12. Jim is paid \$40 a day for food and expenses when he works out of town. Jim's employer decides not to pay him for two of days Jim is claiming. Jim tells the employer he must pay for the two days or he will file an employment standards claim. Does Jim have a valid claim?
- a) Yes b) No
13. An employer had inadvertently overpaid an employee's earnings for the last 6 months. He may correct this error?
- a) True b) False
14. Jane lost her cheque stubs for the last year and she has asked her employer to provide her with a detailed statement of how her earnings were calculated. The employer refuses to provide this information to Jane. Jane has a right to ask for this information from her employer?
- a) Yes b) No

Answers:

1. (b) 2. (b) 3. (b) 4. (b) 5. (a) 6. (a) 7. (a) 8. (c) 9. (b) 10. (c) 11. (b) 12. (b)
13. (a) 14. (a)

QUIZ #2

Module IV - Minimum Wage and Minimum Hours

Module V - Hours of Work and Rest

1. An employee can agree with an employer to be paid straight commission whether or not it works out to minimum wage?
a) True b) False
2. Graham showed up for his shift and worked two hours. His employer told him he did not require him to work out his shift and sent Graham home? Graham makes \$10 an hour. He would be entitled to be paid:
a) 3 hours at minimum wage
b) 4 hours at minimum wage
c) \$20
3. An employee is scheduled to work at 7:00 a.m. is called at home by her employer at 6:00 a.m. and told not to come in for her shift. She is owed three hours at minimum wage?
a) True b) False
4. Susan is asked to be on call every other weekend, for every call she takes she is paid \$10. One particular Saturday Susan received 3 calls one at 9:00 a.m., one at 1:00 p.m. and the last one at 6:00 p.m. Susan should be paid 3 times the 3 hour minimum show-up pay?
a) True b) False
5. Heather had been scheduled to work from 1:00 p.m. to 5:00 p.m. She asked for a break after working 3 hours. Her employer denied her the break. She told him he must give her a half hour break? He said he did not have to give her a break unless she was scheduled to work 5 hours or more.
a) True b) False
6. The staff at ABC restaurant were called in on Sunday morning for a one hour staff meeting. The restaurant did not open until 4:30 p.m.. At minimum what is the employer required to pay each of the staff who attended the meeting?
a) one hour at their regular wage
b) 3 hours at minimum wage
c) one hour of overtime

7. On average how many days off per week must an employee be granted?
- a) one and a half
 - b) two
 - c) one
8. Including all breaks, what is the maximum number of hours a person can work in any one day?
- a) 12
 - b) 15
 - c) 8
9. How much written notice must be provided to change a shift?
- a) 8 hours
 - b) 12 hours
 - c) 24 hours
10. Training time is not considered as part of hours of work?
- a) True
 - b) False

Answers:

1. (b) 2. (c) 3. (b) 4. (a) 5. (a) 6. (b) 7. (c) 8. (a) 9. (c) 10. (b)

QUIZ #3

Module VI – Overtime and Overtime Pay

1. Under the Code, all employees in Alberta are paid overtime if they work more than 8 hours per day or 44 hours per week.
 - a) True
 - b) False
2. An hourly paid employee works a compressed work week of 10 hours per day, four days week. When does overtime commence according to the Code?
 - a) After 8 hours per day
 - b) After 10 hours per day
 - c) After 40 hours per week
 - d) After 44 hours per week
3. Which of the following provisions are deemed to be included in any overtime agreement.
 - a) the employer formally requests an employee to work overtime
 - b) for every banked overtime hour worked 1.5 hours can be taken off from work with pay
 - c) one months written notice must be provided by one part to another to terminate the agreement
 - d) if time off with pay is not provided within 3 months of the end of the pay period, it will be paid out at time and one half
4. When employment terminates, an employer may require an employee to utilize banked overtime during the notice period.
 - a) True
 - b) False
5. If an employer establishes a work week of fewer than 44 hours (e.g. a 40 hour work week) overtime pay is still payable under the basic 8/44 rule unless:
 - a) a collective agreement provides for payment of overtime after 40 hours
 - b) some other agreement provides for overtime after 40 hours
 - c) the consistent practice of an employer is that overtime is paid after 40 hours
 - d) all of the above
6. An employee regularly works seven hours a day, six days a week. One day the Employee was required to work ten hours instead of seven. How many hours of overtime is the employee entitled to?
 - a) 2 hours
 - b) 3 hours

7. Can an employer make it a condition of employment that all overtime be banked and given as time off with pay?
- a) Yes b) No
8. If an employee quits before taking the time off that is banked, he can be paid out all banked hours at straight time?
- a) True b) False
9. An employee on a monthly salary is not entitled to overtime pay for overtime hours, because the total days of work and total monthly hours worked vary from month to month.
- a) True b) False

Answers:

1. (b) 2. (b) & (d) 3. (c) & (d) 4. (a) 5. (d) 6. (a) 7. (b) 8. (b) 9. (b)

QUIZ #4

Module VII - General Holidays and General Holiday Pay

1. A qualified part-time employee who generally works Friday through Sunday is called to work on Family Day Monday. This employee is entitled to:
 - a) regular days wages
 - b) time and one half for all hours work
 - c) both a and b

2. A retail clerk is employed on an *as needed* basis, and is considered a "casual position". Out of nine Fridays prior to Good Friday she worked six. The employer feels that because the employee will not be working the Thursday before, or the Monday following the holiday, he does not have to pay General Holiday entitlements to the employee for Good Friday. Is the employer correct?
 - a) Yes
 - b) No

3. A full time employee who normally works Monday through Friday is asked to work on Family Day Monday. The employee wants to be given a future day off with pay in addition to time and one half for all hours worked on the holiday. Is the employee entitled to this arrangement?
 - a) Yes
 - b) No

4. Jane works at a Video store four days a week, Monday through Thursday for 8 a.m. to 4 p.m.. Her employer has told her she would not be entitled to General Holiday Pay for Good Friday. Is her employer correct?
 - a) Yes
 - b) No

5. Susan started a Part-time job on August 1st, she was paid an hourly wage. Her work schedule was Monday, Wednesday and Friday of each week. She questioned why her end of September cheque did not include payment for the Labour Day holiday, which she did not work. Susan told her employer she felt she was owed for the General Holiday because she worked the shift before and shift after the holiday. Is Susan correct?
 - a) Yes
 - b) No

6. A full time employee is taking his annual two week vacation starting December 24, and informs the employer he will be back to work on the Wednesday following the two week vacation. The employer insists the employee must two weeks from the 24th. Is the employer correct in arguing the employee is not entitled to more time off for the general holidays that fall during the vacation absence?
 - a) Yes
 - b) No

Answers:

1. (b) 2. (b) 3. (b) 4. (a) 5. (b) 6. (b)

QUIZ #5

Module IX – Vacation and Vacation Pay

Note: Multiple Choice may have more than one correct answer.

1. After working 11 months with a company, an employee is terminated. In lieu of vacation entitlement, the employer must pay the employee 4% of the wages earned by the employee while working for the company?
a) True b) False
2. Employees must receive their vacation pay:
a) After they return to work just in case they quit
b) As a part of every pay cheque
c) On the employee's request, at least one day before starting their vacation
d) No later than the next regularly scheduled pay day after the employee starts their vacation
3. Once an employee has accrued their vacation they may take their vacation anytime they want to as long as they tell their boss.
a) True b) False
4. Bob started working for ATAB industries on July 1, 1996, as a hourly wage employee. He quit for 2 ½ months during the winter of 1998, to attend school. He was hired back as a salary employee and is still employed by ATAB today. His vacation entitlement would be?
a) 2 weeks and 4% of wages
b) 3 weeks and 6% of wage
c) 3 weeks at his current salary
5. A single employee hates taking time off work and volunteers to forgo the time and only take vacation pay. His employer tells him that by law he must take time off for vacation. Is the employer correct?
a) Yes b) No
6. Vacation pay is calculated at 4 or 6% of wages. Wages **do not** include which of the following:
a) Overtime earnings
b) Unearned bonuses
c) Pay in lieu of termination pay
d) the previous years vacation pay

7. If an employer has paid an employee 4% vacation pay on each cheque and the employee has worked for the employer 5 years, the employer is required to go back and calculate an additional 2% on all of the wages earned during the fifth year of employment, if the employee works out his entire fifth year.
- a) True b) False
8. Do part-time and casual workers qualify for vacation and vacation pay?
- a) Yes b) No
9. Barb has worked in a salaried position for 4 years and 3 months. She had not taken any of her vacation entitlements earned in the previous year. How would the employer pay out the outstanding vacation entitlements owed to her?
- a) 4% of all earnings for last year and 3 months
b) 6% of all earnings for the last year and 3 months
c) two weeks at current salary and 4% of wages for last 3 months
10. Andrew started with Zrock on September 1. The employer has a common anniversary date of January 1. Andrew would be entitled to his full vacation entitlement of two weeks to be taken between January 1 and December 31.
- a) True b) False

Answers:

1. (a) 2. (c) & (d) 3. (b) 4. (c) 5. (b) 6. (a), (b) & (c) 7. (a) 8. (a) 9. (c)
11. (b)

QUIZ #6

Module X – Termination Pay

Note: Multiple Choice may have more than one correct answer

1. The Code stipulates that notice of the intention to end the employment relationship is required:
 - a) by the employer only
 - b) by the employee only
 - c) only after 3 months of employment
 - d) within 24 hours of the termination
 - e) as a courtesy
2. Both employees and employers are required to provide the same amount of termination notice.
 - a) True
 - b) False
3. Joe bought Jay's Pizza Parlour and kept on the pizza cook. The cook had been with Jay for over 4 years. After 6 months Joe and the cook were not getting along and Joe wanted to terminate the cook's employment by paying out termination pay. How many weeks of pay would Joe owe the cook.
 - a) 2 weeks
 - b) 1 week
 - c) 4 weeks
4. If an employee continues to work for an employer after the date specified on a termination notice then the employer does not have to provide any further notice of termination.
 - a) True
 - b) False
5. Which of the following situations require no termination notice/pay by the employer?
 - a) a employee hired to clear snow during the winter
 - b) an employee laid off for 3 months
 - c) an employee who has been offered reasonable alternative employment
 - d) An employee who has been ill for over six months
 - e) An employee who has the right to refuse work
6. How does an employer compute termination pay where the wages of an employee vary from one pay period to the next?
 - a) Use an average of the last year of wages
 - b) Use an average of the last 9 weeks of wages
 - c) Use an average of the last 13 weeks of wages

7. Can an employer require an employee to take vacation with pay during their notice period?
a) Yes b) No
8. A three year employee at a carton manufacturing plant received notice that the wages for the entire staff would be cut by 10%, effective immediately. The employee stated that this is not acceptable, and not to expect her in to work again. She asked for her final pay immediately. The employer advised that he did not have to pay her for two weeks and 10 days. Is the employer correct?
a) Yes b) No
9. An employer has been served with a garnishee order against an employee's wages. Shortly thereafter the employer gives that employee notice of termination. The employee could file a claim with Employment Standards, and if the dismissal is found to be because of the wage garnishee, Employment Standards can order the employee's re-instatement and/or the payment of lost earnings to a maximum of six (6) months. Is this correct?
a) Yes b) No
10. If an employer provides the appropriate written termination notice or pay in lieu of notice, there is no requirement to tell an employee why his employment is being terminated.
a) True b) False
11. Paul has worked for his employer for over 6 years. He has given his employer 6 weeks written notice. The employer wishes to advance Paul's notice because he has someone else in mind for the position and wishes to offer the job, as soon as, possible. What is the minimum requirement for the employer to advance the notice?
a) It cannot be advanced
b) Pay out 6 weeks termination pay
c) Allow Paul to work out 4 weeks of notice
d) Pay Paul 4 weeks termination pay

Answers:

1. (c) 2. (b) 3. (c) 4. (b) 5. (a),(c) & (e) 6. (c) 7. (b) 8. (b) 9. (a) 10. (a)
11. (c) & (d)

QUIZ #7

Module XI – Maternity and Parental Leave

Module XII – Adolescents and Young Persons

1. Shortly after she starts a new job, a woman finds she is three (3) months pregnant. She informs her employer that she will be taking maternity leave beginning two weeks before her expected due date. Her employer advises that he will have to fill her position by another permanent employee as soon as she leaves. The employee insists that she is entitled to maternity leave and that her position must be kept for 52 weeks after her leave begins. Is she correct?

a) Yes b) No
2. Maternity and Parental leave must be extended beyond 52 weeks if medical problems arise with the mother?

a) True b) False
3. Three months into her maternity leave a medical receptionist's employer closes his practice and advises her there will be no job for her to return to. Within 10 months the doctor returns to practice, re-opens his office and hires new staff. The receptionist contacts the doctor and demands that she be hired in the position she previously held. She is told all available positions have been filled. Is the receptionist within her rights in asking to be rehired, and is she entitled to priority in hiring?

a) Yes b) No
4. Alice gave her employer the 6 week notice required to take her maternity leave and it was agreed that she would only take the 15 week maternity leave. After the 15 weeks were up, Alice decided she would like to take an additional 10 weeks of parental leave. Her employer advised her that she must have given 4 weeks notice to extend her leave, therefore he would not give her previous position back unless she returned to work immediately. He did offer her a part-time job in another department if she wished to stay off for the additional 10 weeks. Is the employer fulfilling his obligation under the Code?

a) Yes b) No
5. A parent wishing to adopt a 14-year-old, would not be eligible for 37 weeks parental leave?

a) True b) False
6. A 14-year-old girl was asked to work in the kitchen of her parent's restaurant. She was scheduled to work from 4 to 6 every weekday. Is this a legal working arrangement?

a) Yes b) No

7. Susan just turned 17 and works in a fast food restaurant and she always willing work. She has offered to work a 6 p.m. - 2 a.m. shift with an adult co-worker. Her parents have given their consent and agreed to pick her up. Her employer told her he could not put her on this shift because she would be working after midnight. Is the employer correct?
- a) Yes b) No
8. Adolescents between the ages of 12 and 14 can work the following types of work:
- a) in an office
b) delivering flyers and newspapers
c) in a restaurant with a permit
d) on a golf course
e) in a laundry-mat
9. Simon is 14 and works at the local sports store every Saturday, his employer has asked him to work from 9 a.m. to 6 p.m. each of his shifts. Simon told the employer that he was told he could only work 8 hours on a non-school day. Is Simon right?
- a) Yes b) No

Answers:

1. (b) 2. (b) 3. (a) 4. (a) 5. (b) 6. (b) 7. (a) 8. (a), (b), (c) 9. (a)



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